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Platinum Optics Technology Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VIAVI SOLUTIONS INC.,

Plaintiff,

v.

PLATINUM OPTICS TECHNOLOGY INC.,

Defendant.

CASE NO. 5:21-cv-06655-EJD

**DEFENDANT PLATINUM OPTICS
TECHNOLOGY INC.'S MOVING
SEPARATE STATEMENT IN SUPPORT OF
ITS MOTION FOR SUMMARY
JUDGMENT OF NON-INFRINGEMENT
(redacted version of motion sought to be filed
under seal)**


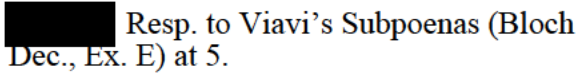

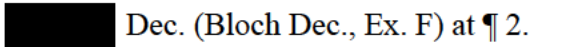

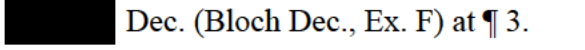
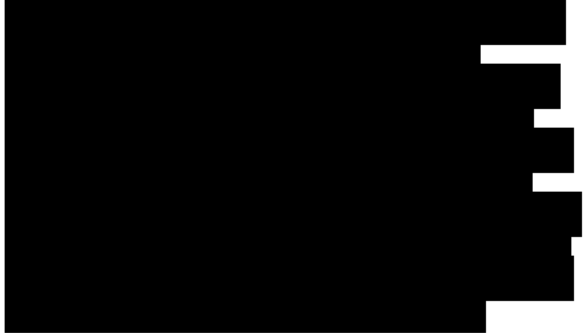


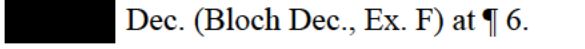
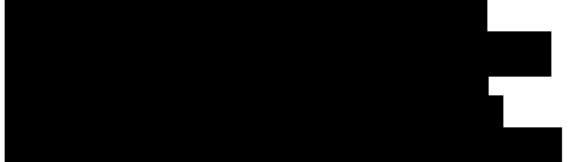
Pursuant to Federal Rule of Civil Procedure 56 and Section V of Judge Edward J. Davila's Standing Order for Civil Cases (August 31, 2022), defendant Platinum Optics Technology Inc. (PTOT) provides the following Moving Separate Statement in support of its motion for summary judgment of non-infringement.

Fact No.	PTOT's Undisputed Facts / Supporting Evidence	Viavi's Response / Supporting Evidence
Counterclaims 1-3 Declaratory Judgment of Non-Infringement of the '269, '526, and '794 Patents		
1.	<p>In August 2021, Viavi moved to amend its Infringement Contentions in Case No. 20-cv-05501 (the -5501 Action) claiming that it located a "non-Viavi" filter in an [REDACTED] product in the U.S. Specifically, Viavi asserted that "Viavi believes it [through its counsel has] located one Infringing PTOT Filter in [REDACTED] purchased in the United States in July."</p> <p>-5501 Action, ECF 103-4 (Motion to Amend Contentions) and 103-6 (Hector Dec.); -5501 Action, ECF 115 (Opposition); -5501 Action, ECF 130 (Reply); -5501 Action, ECF 168 and 169 (Order denying Viavi's motion).</p>	
2.	<p>Viavi has not identified any PTOT filters on sale in the United States and has only identified one non-Viavi filter in the United States. PTOT has disputed that the "non-Viavi" filter that Viavi alleged to have located is PTOT's filter.</p> <p>-5501 Action, ECF 114-4; Viavi 1st Supp. Resp. to PTOT's 1st Set of Interrogs. (Oct. 7, 2022) (Bloch Dec., Ex. C) at 8, 11.</p>	
3.	<p>Since Viavi moved to amend its Infringement Contentions in the -5501 Action, Viavi has concluded that [REDACTED]</p> <p>[REDACTED]</p> <p>Viavi 1st Supp. Resp. to PTOT's 1st Set of</p>	

1		Interrogs. at 11 (Oct. 7, 2022) (Bloch Dec., Ex. C) at 8, 11.	
2			
3	4.	PTOT manufactures bandpass filters referred to by [REDACTED] project names [REDACTED] the former also being known as [REDACTED] while the latter are also known as [REDACTED]	
4			
5			
6		Lin Dep. Tr. (Bloch Dec., Ex. H) at 22:9-26:20, 39:9-11; PTOT 1st Supp. Resp. to Viavi's 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Dec. Ex. A) at 5-9.	
7			
8			
9	5.	From PTOT's perspective, the "alternative names" have no meaning to the two types of PTOT filters, [REDACTED], that are [REDACTED] "qualified.	
10			
11		Lin Dep. Tr. (Bloch Decl., Ex. H) at 22:9-26:20; PTOT 1st Supp. Resp. to Viavi's 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex. A) at 6-7.	
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13			
14	6.	PTOT sells the [REDACTED] filters only to [REDACTED] (collectively, "PTOT's customers"), each of which is located in Asia.	
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18		Lin Dep. Tr. (Bloch Dec., Ex. H) at 22:9-26:20; Viavi Resp. to PTOT's RFAs (Oct. 7, 2022) (Bloch Dec., Ex. G) at 18.	
19			
20			
21	7.	PTOT manufactures and sells the [REDACTED] filters in response to purchase orders received from PTOT's customers.	
22			
23		Lin Dep. Tr. (Bloch Dec., Ex. H) at 51:15-52:7, 66:23-67:3, 88:6-20, 90:16-91:14, 92:11-93:1, 93:7-24.	
24			
25	8.	PTOT manufactures and sells the [REDACTED] filters exclusively in Asia and does not sell or ship the [REDACTED] filters to any entity in the United States.	
26			
27		Lin Dep. Tr. (Bloch Decl., Ex. H) at 131:5-132:7; Viavi Resp. to PTOT's RFAs (Oct. 7,	
28			

1		2022) (Bloch Dec., Ex. G) at 18; ECF 1 at ¶ 20.	
2			
3	9.	PTOT does not sell the [REDACTED] filters to [REDACTED]	
4			
5		Lin Dep. Tr. (Bloch Dec., Ex. H) at 22:9-26:20, 66:23-67:8, 125:24-126:1; PTOT 1st	
6		Supp. Resp. to Viavi's 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex. A) at 2-4, 14-15.	
7			
8	10.	For PTOT to sell the [REDACTED] filters to its customers, the filters have to meet [REDACTED] technical requirements, as set forth by Apple (and not PTOT) in [REDACTED] specifications such as the [REDACTED] that PTOT provides no input for.	
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12		Lin Dep. Tr. (Bloch Dec., Ex. H) at 28:25-35:8, 41:4-42:6, 44:6-45:22, 67:10-20, 76:7-12; PTOT 1st Supp. Resp. to Viavi's 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex. A) at 5-6, 12.	
13			
14			
15	11.	PTOT and [REDACTED] have entered into a [REDACTED] which sets forth [REDACTED]. It does not provide for sale of goods directly to [REDACTED].	
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19		[REDACTED] (Bloch Dec., Ex. I) at 1, ¶¶ 1.2, 1.6, 2.2(e), 8.1(a); Lin Dep. Tr. (Bloch Dec., Ex. H) at 69:18-22.	
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21	12.	The [REDACTED] states that [REDACTED]	
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23			
24		[REDACTED] (Bloch Dec., Ex. I) at 1.	
25			
26	13.	PTOT's customers (and not [REDACTED]) verify whether PTOT's filters comply with the specifications each time PTOT ships the filters to the customers and inform PTOT of quality issues related to non-compliance.	
27			
28		Lin Dep. Tr. (Bloch Dec., Ex. H) at 29:14-	

1		35:8, 44:24-45:7, 124:3-126:11, 147:8-149:23; [REDACTED] (Bloch Dec., Ex. I) at ¶ 1.2.	
2			
3	14.	PTOT does not own or control any of PTOT's customers and has no right to, and does not, direct where its customers sell products that include the [REDACTED] filters.	
4		Lin Dep. Tr. (Bloch Dec., Ex. H) at 28:25-33:25, 58:14-16, 86:21-88:2, 136:3-138:22, 157:2-9, 162:21-164:22; PTOT 1st Supp. Resp. to Viavi's 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex. A) at 12-13.	
5			
6	15.	PTOT does not track how its customers use PTOT's filters and has no information concerning where its customers sell products that include the [REDACTED] filters. PTOT does not know where its filters go after being sent to its customers.	
7		Lin Dep. Tr. (Bloch Dec., Ex. H) at 54:21-55:7, 55:14-56:6, 58:2-59:9, 136:3-138:22, 141:9-145:11, 157:2-9, 163:9-12, 164:11-22; PTOT 1st Supp. Resp. to Viavi's 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex. A) at 2-8, 14-15.	
8			
9	16.	PTOT has no insight into or knowledge as to how [REDACTED] or its approved suppliers select components for incorporation into [REDACTED] mobile devices.	
10		Lin Dep. Tr. (Bloch Dec., Ex. H) at 58:2-59:9, 136:3-22, 138:23-141:4; PTOT Resp. to Viavi's 2nd Set of Interrogs. (Bloch Dec., Ex. B) at 5-7.	
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12	17.	[REDACTED]	
13		Non-Party [REDACTED] Supp. Resp. to Viavi's Subpoena (Oct. 7, 2022) (Bloch Dec., Ex. D) at 18.	
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18.	  Resp. to Viavi's Subpoenas (Bloch Dec., Ex. E) at 5.	
19.	  Dec. (Bloch Dec., Ex. F) at ¶ 2.	
20.	  Dec. (Bloch Dec., Ex. F) at ¶ 3.	
21.	  Dec. (Bloch Dec., Ex. F) at ¶ 5.	
22.	  Dec. (Bloch Dec., Ex. F) at ¶ 6.	
23.		

1		
2		Non-Party [REDACTED] Supp. Resp. to Viavi's
3		Subpoena (Oct. 7, 2022) (Bloch Dec., Ex. D)
4		at 16.
5	24.	PTOT is not aware that [REDACTED]
6		[REDACTED]
7		PTOT
8		became aware that Viavi alleges that it is
9		supplying filters to [REDACTED] because of Viavi's
10		U.S. litigation against PTOT.
11		Lin Dep. Tr. (Bloch Dec., Ex. H) at 59:20-
12		60:23, 108:4-111:10, 158:4-13.
13	25.	PTOT does not proactively tell its customers
14		that PTOT is qualified by [REDACTED]. PTOT's
15		understanding is that [REDACTED]
16		[REDACTED]
17		Lin Dep. Tr. (Bloch Dec., Ex. H) at 52:3-23,
18		53:4-54:20.
19	26.	"On or about September 1, 2020, at [REDACTED]
20		request, PTOT provided [REDACTED] with 15
21		[REDACTED] wafers diced to 20 mm x 20 mm
22		squares, free of charge" (the [REDACTED]
23		wafers").
24		PTOT 1st Supp. Resp. to Viavi's 1st Set of
25		Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex.
26		A) at 7; <i>see also</i> Lin Dep. Tr. (Bloch Decl.,
27		Ex. H) at 48:16-50:5, 97:23-100:5, 100:10-
28		103:7.
	27.	PTOT did not send the [REDACTED] wafers as part
		of the qualification process and does not
		know why [REDACTED] requested them because
		[REDACTED] did not specify the reason for its
		request."
		PTOT 1st Supp. Resp. to Viavi's 1st Set of
		Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex.
		A) at 7; Lin Dep. Tr. (Bloch Dec., Ex. H) at
		44:12-45:22, 50:3-5, 97:23-100:5, 106:4-19,
		125:20-126:11.

28.	<p>The diced [REDACTED] wafers “could not be incorporated into an [REDACTED] Device without significant additional manufacturing steps that PTOT was never asked to perform and has not performed.”</p> <p>Lin Dep. Tr. (Bloch Decl., Ex. H) at 126:4-128:22; PTOT 1st Supp. Resp. to Viavi’s 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex. A) at 7-8.</p>	
29.	<p>Viavi itself admits that there is no watermark or other indicia showing where a particular filter comes from.</p> <p>-5501 Action, ECF 103-4 (Motion to Amend Contentions) at 5 FN4 (“[T]here is no product identifier or anything on the filter that would identify the manufacturer as PTOT.”).</p>	

Pursuant to § V.B.5 of the Standing Order, I attest that the evidence cited herein fairly and accurately supports the facts as asserted.

DATED: October 28, 2022

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